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UNCLAS SECTION 01 OF 04 MEXICO 002834

SIPDIS

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E.O. 12958: N/A

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SUBJECT: MEXICO,S SUPREME COURT (SORT OF) RULES IN FAVOR OF  
SECRET BALLOT UNION ELECTIONS

REF: REF: 07 MEXICO 5161

1. Summary: On September 10, Mexico,s Supreme Court issued a ruling that would require the use of secret ballots in union elections. Previously, under Mexican Federal Labor Law, secret ballots were an option but not a requirement. The governmental bodies responsible for establishing the procedures for and validating the results of union elections are the Conciliation and Arbitration Councils and, up until now, in the absence of a specific directive on how to organize election, rarely opted to use secret ballots to resolve union contests or disputes. Over the years, the optional use of secret ballots prompted numerous court challenges seeking to establish when and how they could be used. These cases resulted in a string of conflicting decisions related to the procedures for holding union elections. Now, as a result of the Supreme Court,s decision, all prior conflicting rulings on the use of secret ballots have, in theory, been overturned. The decision to mandate secret ballots is being hailed by union leaders and labor activists associated with Mexico,s main opposition political party as a significant human rights victory. Undoubtedly the ruling is a significant step forward with the potential to dramatically change how labor unions function in Mexico. However, the ruling applies only to Conciliation and Arbitration Councils and to cases where the choice of union representation is at issue. It does not in any way touch on the manner in which internal elections for union officials are held. It remains to be seen how vigorously GOM labor authorities will move to fully implement the ruling on secret ballot elections. End Summary.

SECRET BALLOTS ARE OPTIONAL  
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2. Securing the right to a secret ballot in union elections has long been one of the highest priorities for labor activists in Mexico. The goal of these activists was to establish a legal right to secret ballot elections both when choosing union officials and when determining which union would represent the workers in collective bargaining negotiations. Until recently, Mexican Federal Labor Law (FLL) permitted but did not mandate the use of secret ballots in union elections. In fact the FLL provided no clear guidance of any kind as to the procedures to be followed in union elections. Because of this lack of specific direction on the procedures for conducting union elections, the FLL had traditionally been interpreted as meaning that a secret vote was just one option available from a broad range of

possibilities when organizing union ballots.

¶3. In the absence of a specific legal requirement to use secret ballots most labor authorities throughout Mexico left decisions on the procedures for holding union elections up to the offices of federal or state Conciliation and Arbitration Councils. More often than not these Councils looked for the path of least resistance in resolving labor disputes. The Councils would organize secret ballot elections provided all parties to a given dispute indicated a willingness to resolve their differences in advance. However, if one of the disputing parties objected to secret ballot elections, the Councils unflinchingly argued that they had no authority to impose a secret ballot on anyone unwilling to participate.

¶4. Post notes that although the various Councils were unwilling to impose a secret ballot on those disinclined to participate in this type of election; they did not hesitate to compel the use of one of the other available options for holding elections. The &open vote8, the most common procedure used to conduct union elections, gathered workers together in a place deemed appropriate by a Council and required a public show of hands. Open votes always took place in front of contending unions and company management. The standard practice of routinely imposing an &open vote8 or one of the other available election procedures prompted a long string of court challenges by the losing side once a Council denied them the option of a secret ballot.

#### CONFLICTING COURT DECISIONS

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¶5. Mexican FLL allows for appeals to the country,s judicial system in both federal and state cases where a dispute exists over some aspect of a union election. Although there is no way to accurately gage the validity of the grievances filed by the losing side in a union election, the complainants routinely claimed that their side would have won if only the Council (federal or state) had agreed to put the matter to a secret ballot. The clear aim of those seeking judicial redress was to have their arguments validated and to obtain a court order requiring a secret ballot &do over8 of the disputed election but instead, they were met with a series of conflicting court decisions that were all over the judicial map.

¶6. Generally when a court attempted to tackle a complaint based on a Council decision to disallow a secret ballot, it would ultimately be confronted with the realization that Mexico,s FLL provided no clear guidance on the use of such procedures. In fact the FLL (specifically Article 931 of the FLL) is all but silent on the procedures to be used when conducting union elections. Given the law,s lack of specific guidance, Mexican courts viewed themselves as empowered to decide disputed labor cases in any way they deemed best. In some cases the courts ordered new secret ballot elections and in others they did not, choosing instead to validate whatever alternative procedure had already been used to resolve the union election in question.

¶7. This &do as you deem best8 approach did result in some instances where the courts ordered new secret ballot elections, but the number of these cases was never very high. Although the number of such cases was limited, they were high enough to prevent either the Councils or the various elements of Mexico,s organized labor movement from knowing exactly where the judiciary stood on the use of secret ballots when conducting union elections. Ultimately, the incidence of court rulings ordering secret ballot elections and the lack of any consistency in these judgments was high enough to encourage those unhappy with the outcome of a union election to appeal to the judiciary in the hopes of obtaining more favorable results. Groups arguing in favor of secret

ballot elections wanted to use the secret ballot process when choosing union officers and when determining which union would represent the workers in collective bargaining negotiations.

#### THE SUPREME COURT FINALLY DECIDES

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¶8. The case which finally prompted Mexico,s Supreme Court (SCJN) to take on the issue of secret ballots involved a dispute between the National Miners Union (SNTMMSRM) and the National Mine Exploration and Exploitation Workers Union of the Mexican Republic (SNEEBMRM), which were both competing for recognition as the legal bargaining representative for the workers at a copper mine. Until 2006 the SNTMMSRM had been the only union of mine workers in Mexico. The SNEEBMRM is a newly formed union that is rumored to have considerable GOM support. As reported in reftel, in September 2007 the newly formed SNEEBMRM won a series of &open vote8 elections against the National Miners Unions that would have been viewed as seriously flawed by international standards. The new union,s electoral victories were contested in court by the losing union and ultimately made its way to Mexico,s SCJN in early 2007.

¶9. In deliberating on the dispute between the two miners, unions, the SCJN pointedly acknowledged that FLL (specifically Article 931) provided no clear guidance on the procedures to be used for conducting union election. Nevertheless, the court said, a systematic analysis of the concepts underlying the FLL, and a deliberate examination of the fact that a union vote is the ultimate expression of the will of the workers, forced the SCJN to conclude that the law should guard the right expression by protecting the confidentiality of a worker,s vote. In addition, the Court stated that its deliberations were strongly guided by the ideals contained in the Universal Declaration of Human Rights and by ILO Convention No. 87 (Freedom of Association and Protection of the Right to Organize). Finally, the Court

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affirmed its clear intent to protect workers from any and all external pressures that could influence their votes. Consequently, the SCJN decreed that secret ballot votes were now mandatory in any instance when two or more union competed for recognition as the legal bargaining representative.

¶10. In making its ruling on the mandatory use of secret ballots the SCJN sought to eliminate the ambiguity in the FLL that had caused so many problems in the past. The Court did this by providing specific guidelines for the conduct of union elections. Since the SCJN,sruling on secret ballots, all elections in which two or more unions competing to represent a group of worker must include a complete list of all workers employed by a particular company, the use of printed voting ballots, the use of appropriate booths and voting boxes, the presentation of an official photo identification by all workers attempting to vote which must be cross-reference with the employee list provided by the employer, prior notification of the date and time of the election as well as the selection of a neutral voting place, and onsite presence of representatives from the competing unions during the election process.

#### PRAISE FOR COURT DECISION

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¶11. The GOM,s Secretariat of Labor (STPS) hailed the Court,s decision on secret ballot elections as a &transcendental step toward liberty, democracy and labor transparency in the country from which there would be no going back8. This comment was essentially echoed by the Presidents of the Federal Conciliation and Arbitration Councils who committed all of the offices within the

jurisdiction of GOM federal labor authorities to fully implement the Court,s ruling. In addition to the praise the court decision received from the STPS and the federal Councils it was also hailed by union leaders and labor activists associated with Mexico,s main opposition political party, the Party of the Democratic Revolution (PRD) as a historic human rights victory. These accolades from the PRD affiliated groups are particularly significant in that these persons and organization rarely have complimentary things to say about the administration of labor law in Mexico.

#### COMMENT

12. There is no doubt that the Supreme Court,s decision to mandate secret ballot elections is a significant step forward in the administration of Mexican labor law. Moreover, this ruling also has the potential to dramatically change how labor unions function in Mexico. Mexico has a considerable number of labor unions that are all too eager to subordinate worker interests to those of employers for the right price. Up until now challenging these employer friendly unions has been difficult and occasionally dangerous to workers who openly and publicly declared themselves in opposition to these labor organizations. Now, at least in theory, the ability of unscrupulous employers or corrupt unions to pressure, intimidate or improperly influence a worker,s vote will be greatly limited. It remains to be seen, however, if GOM labor authorities will vigorously move to fully implement the ruling on secret ballot elections, particularly since the use of these union voting procedures will clearly disrupt unethical behavior by those who have been able to practice it with impunity for an unpleasantly long period of time.

13. As significant as the SCJN ruling on secret ballot union elections is, it still, unfortunately, falls short. Labor activists in Mexico are rightly pleased with the Court,s decision but once the pleasure in obtaining a long sought goal subsides, they will realize that their battle is only partially won. While the Court,s ruling should change the way unions compete against one another, it would not alter internal union activities. Although workers will now have more legal protections to decide which union will represent them, they still will not have the right to vote in secret ballots when electing new leadership. Open votes are still the standard rule for internal union elections. Because of this, union leaders, once elected, are almost impossible to

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remove no matter how poorly they serve the interests of the workers. Open vote elections have allowed some labor leaders to amass incredible amounts of wealth and power with little or no accountability. Mexico,s constitution guarantees nearly complete union autonomy and as a result it will be very difficult for the Courts to compel them to adopt a more democratic and transparent way of electing their leaders.

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